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**IN THE**  
**Supreme Court of the United States**  
**OCTOBER TERM, 1972**

**STENTON, JR., CLERK**

**No. 71-1082**

**REUBIN O'D. ASKEW, et al.,**

*Appellants,*

**v.**

**THE AMERICAN WATERWAYS  
OPERATORS, INC., et al.,**

*Appellees.*

**On Appeal from the United States District Court  
for the Middle District of Florida**

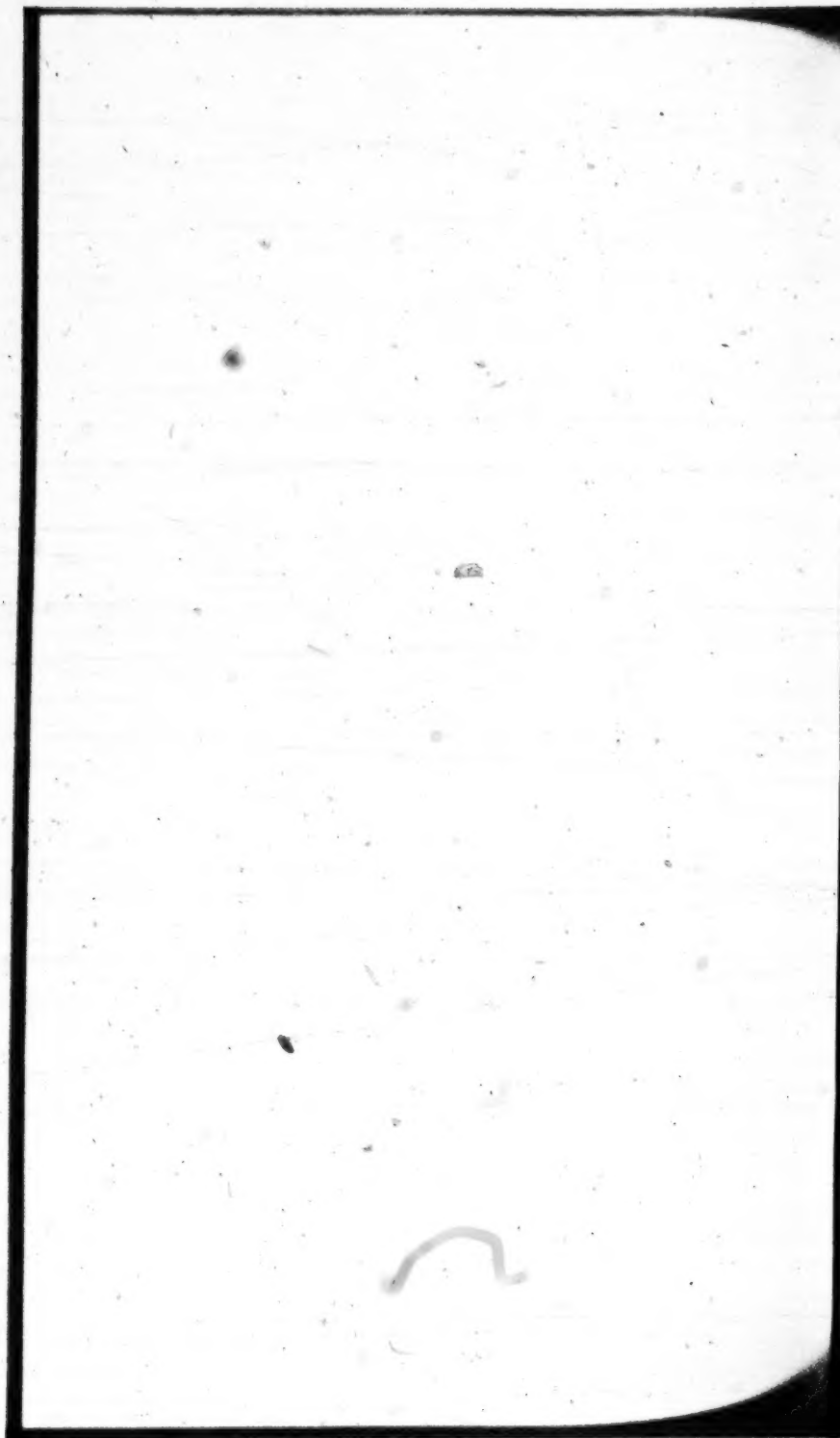
**BRIEF OF THE STATE OF HAWAII  
AS AMICUS CURIAE**

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**STATE OF HAWAII**  
**Hawaii State Capitol**  
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**Honolulu, Hawaii 96813**



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OPINION BELOW

The opinion of the district court is reported in *The American Waterways Operators, Inc. v. Askew*, 335 F. Supp. 1241 (M.D. Fla. 1971).

## JURISDICTION

The judgment of the district court was entered on December 10, 1971, and the Notice of Appeal was filed on December 23, 1971. The court noted probable jurisdiction on April 17, 1972. 40 L.W. 3503. Jurisdiction rests upon 28 USC §1253, this being an appeal from the judgment of a three-judge district court holding Florida's "Oil Spill Prevention and Pollution Control Act of 1970" to be invalid under Article III, Section 2, Ch. 1 of the United States Constitution.

## INTEREST OF THE STATE OF HAWAII

The State of Hawaii, by its unique location and related activities, has long been vitally concerned with preserving and safeguarding its shoreline and surrounding waters. It has long been called an Island Paradise and its excellent climate, beautiful beaches and rugged shoreline have long attracted citizens of other states and of many nations to visit our State.

The tourist industry, which includes sport fishing, bathing, boating and other related activities has become the second leading industry in the State and provides jobs to many thousands of Hawaii's people. These activities all depend upon the favorable and almost pristine conditions of Hawaii's waters, beaches, and shoreline.

However, the consequences of pollution in the form of oil spills or similar contaminating discharges upon the State's offshore waters is not limited simply to the loss of tourists who might refuse to come to Hawaii and recline on beaches which ooze oil. Of vital concern is the peril to the State's countless bays, inlets, lagoons, estuaries, and other non-navigable waters which serve as breeding and spawning grounds to a multitude of aquatic and marine organisms. It is these very organisms which serve as the basis for Hawaii's fishing industry and other industries which depend upon such marine life.

Furthermore, Hawaii has long dreamed of establishing itself as a leader in the ocean sciences. Over the years the State's

superb marine endowments have attracted a host of ocean-oriented scientists bent on making Hawaii an international center of marine activity. The State already boasts of at least two renowned centers for ocean research, Makai Range and the Oceanic Institute. These research centers together with other centers established in Hawaii can study and learn about the ocean, beaches, estuaries, shoreline, and the various marine organisms which inhabit these areas for the benefit of people around the world. Oil spillages, even minor ones, could destroy years of research effort and deprive us of needed information.

In view of the importance ascribed to possible oil pollution in Hawaii, the legislature of this State has proposed Senate Bill 901 which relates to Oil Pollution Control. This bill contains provisions similar to the Florida "Oil Spill Prevention and Pollution Control Act of 1970" and is designed to protect the State's beaches, estuaries, public lands and coastal waters and preserve them in as close to a pristine condition as possible. It was therefore with grave concern that the State received the three-judge district court decision in *The American Waterways Operators, Inc. v. Askew*, 335 F. Supp. 1241 (M.D. Fla. 1971) which struck down the Florida statute as an "unlawful intrusion into the exclusive federal admiralty domain." 335 F. Supp. at 1246.

Hawaii, therefore, has considerable interest in ascertaining the extent of the federal maritime jurisdiction into these areas and whether any such jurisdiction wholly precludes a State from protecting and preserving its property and the health and well-being of its citizens from ocean or water-borne pollution.

### ARGUMENT

The State of Hawaii adopts the questions presented, the Statement of the Facts and the Arguments which are presented to this Honorable Supreme Court by the Brief for the State of Georgia as Amicus Curiae.

### CONCLUSION

The case at bar is of great significance to the rights of the various coastal states to legislate in the area of water pollution to protect their beaches, estuaries, coastline and coastal waters from the deleterious effects of oil spills and other contaminants and enhance the economic and physical well-being of its citizens. For the reasons stated above, we believe the opinion of the court below is erroneous and respectfully submit that its decision should be reversed.

DATED: Honolulu, Hawaii, June 13, 1972.

Respectfully submitted,

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**PROOF OF SERVICE**

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